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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

[redacted]

STATE OF WISCONSIN, *Petitioner,*

v.

JONAS YODER, *Respondent.*

STATE OF WISCONSIN, *Petitioner,*

v.

ADIN YUTZY, *Respondent.*

STATE OF WISCONSIN, *Petitioner,*

v.

WALLACE MILLER, *Respondent.*

On Petition for a Writ of Certiorari to the Supreme Court of the United States

BRIEF FOR RESPONDENTS IN OPPOSITION

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BRIEF FOR RESPONDENTS IN OPPOSITION

This Brief is submitted in response to the Petition filed by the Petitioner State of Wisconsin praying that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Wisconsin, made January 8, 1971, in this criminal proceeding.

OPINION BELOW

The opinion of the Supreme Court of the State of Wisconsin appears in 49 Wis. 2d 430 (1971).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether Wisconsin Statutes Section 118.15(1) (the Compulsory School Attendance Law), as applied in this case, deprives the Respondents of religious liberty in violation of the Free Exercise Clause of the First Amendment to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, amendment I:

> "Congress shall make no law . . . prohibiting the free exercise [of religion] . . ."

The pertinent provisions of the Wisconsin statute involved are set forth in the Petition at page 4.

COUNTERSTATEMENT OF THE CASE

On October 23, 1968, the School District Administrator of New Glarus District No. 1 filed criminal complaints in Green County Court, alleging, as to each of the Respondents, that, as the father of a child under the age of sixteen years, he had failed to cause such child to attend school (public or private) contrary to the requirements of the Wisconsin Compulsory School Attendance Law. Each of the Respondents (adherents of the Amish religion) entered a plea of not guilty.

Upon trial, the Respondents moved to dismiss the three complaints on the ground that the statute was unconstitutional as applied to each of the Respondents in that it deprived him of religious liberty guaranteed to him by the Free Exercise Clause of the First Amendment to the Constitution of the United States.. The motion did not attack the constitutionality of the statute on its face, but solely as applied to these Respondents.

On the trial the following facts were adduced and are uncontroverted:

That the three children (Freda Yoder, Barbara Miller and Vernon Yutzy) respecting whose nonattendance the complaints had been filed, were under the age of sixteen, being of the ages, respectively, of 15, 15 and 14; that each of the children had graduated from the eighth grade of the New Glarus Public [Elementary] School; that the Respondents had failed to enroll these children in New Glarus Public High School at the opening of the Fall, 1968, school term; that this failure was due to religious beliefs held by these Respondents; that there existed within the School District no private high school; that the three children were not enrolled in any private school, parochial or otherwise; that there was no disobedience or delinquency upon the part of any of the children in question; that none of the children in question had been exempted by the public authorities from attending school in the Fall, 1968, school term; that the New Glarus School Administrator had signed the complaint in this prosecution directly upon ascertaining that the Old Order Amish within his district had opened an elementary parochial school, with a resulting loss of state reinbursement to the New Glarus School District

of around $18,000; that the Respondents Miller and Yoder and their two daughters in question were members of the Old Order Amish religious sect and that Appellant Yutzy and his son Vernon were members of the Conservative Amish Menonite Church.

As to the last-mentioned fact, no evidence appears in the record that Respondent and the said children were not sincere in their claim that they believe in, and follow, the teachings of the Amish sect, and the State's attorney asserted that the State had "no objections to stipulating the defendants are sincere in their religious beliefs." Testimony of Dr. John A. Hostetler of Temple University, Philadelphia, whose qualifications as an expert witness on the nature of the Amish society were not challenged, brought out the following facts, uncontroverted in the record, respecting the teachings of the Old Order Amish[1] religion:

1. The requirement of a church community that is separate from the world.

2. Ethical obligations to help their brothers in the faith to achieve Heaven and involving practices of mutual aid and caring for their own people.

3. The binding character of the rules of the faith-community and that it is, as a matter of religious duty, obligatory upon the Amish parent to rear his child in the Amish way of life.

4. The necessity for attachment to the soil, expressed in the fact that the community is an agricultural society.

[1] Nothing was adduced upon the trial to show that the Conservative Amish Mennonite Church differs in its teachings from the Old Order Amish sect, and the trial court properly considered both under the general term, "Amish".

The same witness testified that these principles of the Old Order Amish religion dictate that the Amish child, from the inception of adolescence (the time of adult baptism) live according to the mode of life in the Amish community; that he should not attend a high school, since any high schooling constitutes, in Amish belief, a deterrent to salvation, in that it necessarily involves worldly learning, the substitution of values which are contrary to the Amish religion, and necessitates that the child choose between the ways and values of his parents and conflicting ways and values—resulting in psychological alienation and harm to the child; further, that the Amish adolescent does in fact receive, in the Amish community, an education, though one that is different from that accorded the majority of children.

State's witness, the New Glarus School Administrator, Kenneth J. Glewen, testified that the New Glarus High School encourages the competitive spirit through, *inter alia,* sports; that the teaching of the Ten Commandments is not part of that school's curriculum; that children at the New Glarus High School are encouraged to attend upon social activities, among which are dances; that "moral training" was afforded in that school in conjunction with education in health and general science, and that the ultimate source of law is that of a school administrator.

Defense witness, Reverend Reuben Hirschberger, an ordained minister of the Amish religion, testified to the necessity, according to Amish religious teaching, that Amish children, from eighth grade age on, should be taught the Amish way of life and not attend high school.

Defense witness, Wilbur E. Deininger, Sheriff in Green County from 1963 to 1967, Undersheriff in 1967 and 1968, and present member of the City of Monroe Department of Police, testified that, to his knowledge, no teenage members of the Old Order Amish group dwelling in Green County had ever been apprehended or arrested for crime or engaged in acts of violence.

Defense witness Ray F. Kaskey, for the past nine years Director of the Department of Social Services for Green County, testified that he knew of no Amish in the county who had been recipients of public assistance, had been unemployed or received unemployment compensation, had had illegitimate births, been residents of publicly suported homes for the aged, the indigent, the physically or mentally ill, or alcoholics. He further stated that the Amish people did not add to the social burdens which the taxpayers of Green County must bear, and that the fact that the Amish children do not attend high school has no effect in adding to the social burdens carried by these taxpayers.

One of the three children, Frieda Yoder, aged 15, testified that she believed in the Amish religion and that she desired to live according to the way of her people, the Amish way, and that going to high school would be against her religious beliefs.

Dr. Donald Erickson, of the University of Chicago, whose qualifications as an expert witness on the subject of education were not challenged, testified that it was his opinion that the Amish provide for their children what can be called an education, that it is a good education and that, as an educator, it was his opinion that the application of the Compulsory Attendance Law to Amish children of high school age would be psychologically harmful and of no value educationally.

Prior to the conclusion of trial, the defense introduced two further items of evidence, Defense Exhibit, No. 1, showing the efforts of the defense to obtain exemption, for the three children, from the Wisconsin Superintendent of Public Instruction, and the refusal of such granting of exemption (Defense Exhibit No. 1); and Defense Exhibit No. 4, a booklet, "Vocation on the Farm" containing a vocational educational program which program Respondent Wallace Miller testified was presently employed for children of the Respondents Miller and Yoder.

The trial court found each of the Respondents guilty, at the same time specifically finding that "the Wisconsin compulsory school attendance law *does interfere with the freedom of the Defendants to act in accordance with their sincere religious belief . . .*" (Slip Op. 20. Emphasis supplied.) The Supreme Court of Wisconsin, on January 8, 1971, reversed, specifically holding that the application of the statute herein, to Respondents, violated their religious liberty as guaranteed to them by the Free Exercise Clause.

THE POSITION OF RESPONDENTS ON THE PETITION FOR CERTIORARI

Respondents believe that the decision of the Supreme Court of Wisconsin was correct and, indeed, a long overdue vindication of the religious liberty of an innocent people. Their sole alleged offense to Wisconsin has consisted of persevering in the ways of their utterly distinctive and ancient faith in the crucial matter of the educating of their young at the time of adolescence. For this Wisconsin has prosecuted the Respondent Amish fathers through criminal process, but having available the manifold resources of the

State to prove its point, Wisconsin was unable to show a scintilla of compelling state interest to justify its action.

The denial of a writ of certiorari would be appropriate herein. Respondents recognize, however, that the Court may be disposed to grant the writ, due to the fact that the highest court of the State of Kansas, faced with the same constitutional claim as had been made herein, reached a conclusion opposite of that of the Supreme Court of Wisconsin. *State* v. *Garber*, 197 Kan. 567 (1966), *cert. den.*, 389 U.S. 51 (1967). Should the Supreme Court of the United States be disposed to grant the writ, it will then have the opportunity clearly to affirm, under the law of the land, the principal of religious liberty declared by the Supreme Court of Wisconsin, based on the specific facts of this case. That declaration would give protection to the religious liberty af Amish people, wherever they reside in the United States, in the education of their young.

The Amish (and the closely related Old Order Mennonites) reside in nineteen states.[2] In nine of these states they have been subjected to prosecution for refusal to send their children to high school.[3] Some of the prosecutions have resulted in the imposition of fines, with seizure and sale of possessions of the defendants. The Amish response to legal harassment over education in many states has been to sell their farms

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[2] Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Missouri, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, Wisconsin. HOSTETLER, AMISH SOCIETY, 79 (1968).

[3] See Appendix A.

and move to other states, or even to Canada or Central America.[4] Public revulsion against the prosecutions in some states has resulted in state administrative accommodation or exemptive provisions in statutes.[5] Administrative accommodations, however, are subject to change as administrators change, while statutory exemptions can be amended or repealed. Thus in all states where the Amish reside (and indeed in all other states, to which they may conceivably move), a constitutional basis of their freedom to educate their own children of high school age has been established only in Wisconsin by virtue of the decision which is challenged in this proceeding.

Respectfully submitted,

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[4] See Appendix A.

[5] See Appendix A.